CF0000058126

CrA 900/94

(2)

/- APPEAL OF PRISONER -/

No. 25 Name हेमला मासा

Father's Name सुइया Residence ग्राम कालोनार गायता पारा थाना अंतागढ़ - अबूझमाड़

Age 45 Sentenced to आजीवन कारावास on

2.6.94 ✓ under Section 302 I.P.C. by I अति. सत्र न्यायाधीश जगदलपुर

S.T.No. 125/93

It is explained to the prisoner that if he states or Wishes to be represented by a legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear with in seven days he may be heard at all if the prisoner states that the does not wish to be represented by legal practioner the Court may proceed at once with the case and will not be obliged to give a hearing to any legal proctitioner who shoud appear.

1. Date of application for copy of Judgement: Nil.
2. Date of which copy received:- 2.6.94
3. Date on which Appelisent:- 13.6.94 ✓
4. Whether the prisoner wished to be represented or not Yes/~~No.~~ ✓

No. 25 Name हेमला मासा S/o सुइया

Continued in 29/10/92 to 1/6/94 Jail Jagdalpur Bastar (M.P.)

No. 556/Conf/Legen./94 Dated 13/6/94 ✓

Forwarded to the CHIEF JUDICIAL MAGISTRATE Jagdalpur togather with a copy of judgement or order passed in the case for favour of transmission to the proper Appliate Court.

Superintendent
Dist. Jail Cent. Jagdalpur
Superintendent-Central/Distt./Sub-Jail.

Date of receipt in C.J.M's Office. 14/6/94 ✓

Date of receipt of record of accompany.

Memo of Appeal of the Appelliate Court.

No. 18/94 Dated 15/6/94

Forwarded to the Session Judge Jagdal[pur].

C.J. Magistrate
मुख्य न्यायिक दण्डाधिकारी
जगदलपुर

Date of receipt of Appelliate Court

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(19)

आदेश पत्रक

मामला क्रमांक Cr.A No. 900 सन् 94 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: -
HON'BLE SHRI L.C. BHADOO AND
HON'BLE SHRI DHIRENDRA MISHRA, JJ.
10-2-2006

Shri Ashok Verma, counsel for the appellant.

Shri U.N.S. Deo, Additional Public Prosecutor with Shri Akhil Mishra & Shri M.P.S. Bhatia, Panel Lawyers for the State/respondent.

Oral judgment dictated on *Dais.*

Per Dhirendra Mishra, J

The appellant has preferred this appeal against the judgment dated 2nd June 1994 passed in Sessions Trial No.125/93 by learned 1st Additional Sessions Judge Jagdalpur by which learned trial Judge after holding the appellant guilty under Section 302 of the I.P.C. has convicted and sentenced him to undergo life imprisonment.

The case of the prosecution is that on 25th October 1992 in the evening when appellant namely Hemla Masa returned to his house and his son namely Hemla Mangtu also returned to the house, he asked his son whether his mother has cooked food for him or not and his son stated that she has not cooked the food. He assaulted deceased Hemla Mashe, his wife, with the wooden part of bow over both of her calves, as a result of which she fainted, whereupon he caught hold of neck of Hemla Mashe and tied the same with Dhoti and hanged her with the roof, as a result of which Hemla Mashe died at about 7 p.m.. Son of the appellant Hemla Mangtu (PW-1) narrated the incident to Uika Tambi (PW-5), Sarpanch Uika Lakhmu (PW-2) and thereafter he lodged the

[पीछे देखिये

(15)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

report Ex.-P/1 in the police station Gangalur on 26-10-92 at about 4 p.m. After registering the offence, the Investigating Officer proceeded for enquiry. During the enquiry, inquest report Ex.-P/7 was prepared after due notice to the witnesses in their presence. The body was sent for postmortem to Primary Health Centre, Bijapur and Dr. A.R. Gota (PW-7) after performing postmortem submitted his report vide Ex.-P/11. In the postmortem report, the doctor found incised wound over left calf at its upper 3rd placed horizontally and incised wound over right calf placed vertically. He also found ligature mark present between chin and Larynx. All the injuries were ante-mortem in nature, the cause of death was syncope due to excessive bleeding and according to the doctor, period of death was 48 hours to 72 hours before the postmortem. In the cross-examination, the doctor has stated that he is not in a position to state whether injuries present over the dead body were sufficient to cause death or not, and injuries may be caused all over by shape edged thing.

During investigation, plain and blood stained soil were seized from the spot vide Ex.-P/3. The bamboo stick by which bow was made was seized vide Ex.-P/4. Haika Patwari prepared spot map vide Ex.-P/9. The investigating officer vide memo Ex.-P/16 sought an opinion of the doctor whether the blood stained soil and plain soil are blood stained or not. The doctor submitted his opinion vide Ex.-P/13. The opinion of the doctor regarding presence of blood over the seized stick is Ex.-P/12. The weapon of offence i.e. bamboo stick, blood stained soil and plain soil were sent for chemical examination to the Forensic Science Laboratory vide Ex.-P/19.

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर (16)

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

After recording statements of the witnesses, charge sheet was filed in the Court of Judicial Magistrate, 1st Class, Jagdalpur who in turn committed the case to the Court of Sessions Judge. Learned trial Court received the same on transfer for trial. Charge under Section 302 of the I.P.C. was framed against the accused. The accused abjured his guilt.

The prosecution in order to establish its case examined 9 witnesses. Thereafter, statement of the accused was recorded under Section 313 of the Cr.P.C.. The accused/appellant denied the circumstances present against him in the prosecution case and pleaded that he is innocent and he has been falsely implicated. After hearing learned Additional Government Prosecutor and counsel for the accused, the trial Court convicted the appellant as mentioned above.

The homicidal death of the deceased is not in dispute. Even otherwise, from the postmortem report Ex.-P/11 and statement of PW-2 Uika Lakhmu before whom the appellant has confessed his guilt, it is established that death of the deceased is homicidal in nature.

In order to establish involvement of the appellant in the aforesaid case the prosecution has relied upon the statement of PW-1 Hemla Mangtu, PW-2 Uika Lakhmu and PW-5 Uika Tambi. PW-1 Hemla Mangtu is the son of the appellant and the deceased who was eyewitness to the incident. However, he did not support the case of the prosecution and, therefore, he was cross-examined by the prosecution after declaring him hostile. In his statement PW-1 Hemla Mangtu has stated that his mother was sick. On the date of the incident, he had gone to graze his cows.

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(12)

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

However, subsequently, he learnt that his mother has died. Under what circumstances she died he is not able to state. He had gone to see his mother. However, he did not find any injury over the person of the deceased. His mother was lying over earth. His father was present in the house. However, he did not inform anything to him. In the cross-examination also, he has stuck to his statement made in examination-in-chief. PW-2 Uika Lakhmu has stated that when he was in his house witness Kanna came to him and informed that Hemla Masa has killed and thrown his wife, whereupon he went to the house of the accused and he found that the accused was in his house. He also found wife of the accused hanging through the ceiling. There were injuries on her leg and she was hanging with the help of clothe. On enquiry, the accused stated that after murdering her I have hanged her. He also stated that his wife did not provide him threshed Mahua and, therefore, he has killed her. In the cross-examination, he has admitted that before the death of his wife, there was some altercation between him and the accused. He went to lodge the report along with Hemla Mangtu to the police station. PW-5 Uika Tambi is the Kotwar of the village. He has stated that the accused came to him in his house and informed that his wife Hemla Mashe has died by hanging herself. Thereafter, he went to the house of the accused and saw Hemla Mashe hanging with the roof.

PW-7 Dr. A.R. Gota has conducted the postmortem over the dead body of the deceased. In his report, he has stated that he found 2 injuries over the calf portion of both legs of the deceased. The injuries were incised and grievous. The deceased died because of syncope due to excessive bleeding. However, he has further stated that he is not in a

[पीछे देखिये

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

position to state whether the injuries present over body of the deceased were sufficient to cause death or not and injuries on the person may be caused all over by sharp edged thing.

Learned counsel for the appellant submits that only eyewitness to the incident has turned hostile and the prosecution has not been able to elicit anything on the cross-examination of PW-1 Hemla Mangtu. The alleged extra judicial confession made before PW-2 Lakhmu is of no consequence as he did not state in his diary statement Ex.-D/1 and he has made substantial improvement in his statement. From perusal of statement of PW-5 Uika Tambi it is clear that he has not stated anything incriminating against the accused. He further submits that even if it is assumed that based on the extra judicial confession made by the accused before PW-2, taking into consideration the circumstances in which offence is alleged to have been committed by the appellant and further considering injuries over calf region of both legs over person of the deceased, intention to cause death of the deceased cannot be attributed to the appellant, and offence does not travel beyond section 304-II of the I.P.C..

On the other hand, learned counsel for the State supports the judgment of the trial Court.

We have heard learned counsel for the parties.

We have perused the record, statements of witnesses as also judgment of learned Additional Sessions Judge. Learned Additional Sessions Judge has convicted the appellant on the basis of statement of

[पीछे देखिये

(19)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -6-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

PW-1 Hemia Mangtu and PW-5 Uika Tambi by recording a finding that PW-1 being son of the appellant has not stated true facts and the appellant who was present in the house has not explained circumstances in which his wife died. On the basis of this finding the Court below has held the appellant guilty and sentenced him as described above. It is not disputed that at the time of incident the appellant and his wife were present in their home and thereafter, dead body of the deceased was spotted in the house. All the witnesses came there on the basis of information given to them by PW-1 son of the deceased. PW-2 Lakhmu who came to place of the incident immediately after the incident has stated in his deposition that after reaching the house of the accused he found his wife hanging with the roof. He also found injuries over leg of the deceased. On enquiry, the accused confessed that after killing his wife he has hanged her and he did so because his wife did not give him Mahua after threshing. Thus considering the statement of this witness and further considering that in the diary statement Ex.-D/1 he had mentioned that the appellant has confessed his guilt in his house, we are of the opinion that on the basis of overall circumstances available in the case, the prosecution has been able to establish that the appellant was responsible for the death of the deceased.

Now, the question to be considered is whether the Court below on the basis of evidence available on record was justified to hold the appellant guilty under Section 302 of the I.P.C. or not. Admittedly, the appellant has assaulted the deceased with the help of bamboo stick of the bow, no conventional weapon has been used for commission of the offence and injuries have been caused over calf portion of both the legs

[पीछे देखिये

(20)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -7-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

and thus there is no injury over vital part of the deceased. The cause of death, according to Dr. A.R. Gota (PW-7), is syncope due to excessive bleeding. In the aforesaid circumstances, it cannot be stated that the appellant had any intention to cause death of his wife, though from the evidence available on record it can be safely held that the appellant was aware of this fact that injuries which he has caused to the deceased may result in death of the deceased. The provocation of causing injuries, as per the prosecution, is that the deceased had not cooked the food for her son PW-1 and, therefore, on a sudden provocation, without pre-meditation, in a spur of moment, the appellant assaulted the deceased with bamboo of bow over her calf region. On the aforesaid analysis, we are of the considered opinion that though the appellant was having knowledge that injuries caused by him may cause death of the decease, the intention to cause death of the deceased cannot be attributed to the appellant.

In the result, the conviction of the appellant under Section 302 of the I.P.C. and sentence on this count passed by the trial Court are set aside, instead thereof, we hold the appellant guilty under Section 304-II of the I.P.C. and sentence him to undergo R.I. for 10 years. The appellant is in jail since 1992 which has not been disputed by learned counsel for the State, thus the appellant has completed more than 13 years in jail. It is, therefore, directed that the appellant be set at liberty forthwith if not required in any other case.

Sd/-
L.C. Bhadoo
Judge

Sd/-
DHIRENDRA MISHRA
Judge

Barve

[पीछे दाख

2/12/25 16/12/25

YOGENDRA SINGH KANWAR
Digitally signed by YOGENDRA SINGH KANWAR
Date: 2025.02.06 10:54:43 +0530